DELAWARE HEALTH FACILITIES AUTHORITY

MINUTES OF SPECIAL MEETING

of

March 27, 2013

A special meeting of the Delaware Health Facilities Authority (the "Authority") was held on March 27, 2013, commencing at 10:15 a.m., at the offices of Potter Anderson & Corroon LLP at 1313 N. Market Street, Wilmington, Delaware 19801. The meeting was duly noticed and open to the public.

The following Authority Members attended in person: Rolf F. Eriksen, Chair, Desmond A. Baker, George W. Forbes, III, Lisa More, and Howard A. Palley, Ph.D. Authority Members William G. Neaton and William J. Riddle joined the discussions by telephone connection. Also participating in the meeting from Potter Anderson & Corroon LLP were John J. Quinn, III, Esq., the Authority's Counsel, and Margaret M. Grillet.

Emily Abrantes, Public Financial Management, Inc. ("PFM"), Financial Advisor to the Authority, was present by telephone at the request of the Authority. Emilie R. Ninan, Esq. of Ballard Spahr LLP, bond counsel on all Authority bond transactions in the recent past, was also in attendance at the meeting.

Mr. Eriksen called the meeting to order.

Mr. Eriksen opened the meeting by explaining that the purpose of the meeting of the Members of the Authority is to reflect on the purposes and approaches of work done by the Authority. Mr. Eriksen started by asking the Members to consider the history of the Authority in conducting its business and to consider whether policies and procedures should be formalized in connection with the Authority's consideration of applications for revenue bond financings.

Mr. Quinn then welcomed the Authority Members (including both those present in person and by phone) and the invitees and guests. He reminded everyone that the meeting is open to the public.

Before substantive discussions began, Mr. Riddle advised the Members that he is the current chair of the Nanticoke Memorial Hospital Finance Committee and that he also serves on the Board of Delaware Economic Development Authority. Mr. Forbes advised the Members that he is a new member of the Audit Committee of Christiana Care Health Services, Inc.

Mr. Quinn distributed discussion materials to the Members at the meeting (including previously by email to the Members on the telephone). A copy of those materials is attached. Mr. Quinn then reviewed portions of the Delaware statute creating and empowering the Authority and recited the purposes of the Authority as set forth in the statute.

Mr. Eriksen spoke for a few minutes about the history of the Authority. He reflected on the creation of the Authority, its purposes, initial resistance and challenges, and the Authority's successes in assisting health facilities with affordable financing. Mr. Eriksen discussed some particular financings in which the Authority had been involved and noted that although the volume of work the Authority handles is relatively small compared to similar organizations in other states, it is done very efficiently and at a low cost.

Mr. Quinn stated that a primary purpose of the meeting was to have the Members consider whether the Authority should receive and consider applications for bond financing when the bonds are projected to receive a non-investment grade rating (generally below BBB-), and if such applications are considered, whether and how the bond ratings would factor into the consideration of whether to grant approval of an application.

Mr. Forbes asked for clarification regarding the tax treatment of bonds issued by the Authority and whether there is a tax advantage for investors to purchase bonds that are issued by the Authority. At Mr. Quinn's request, Ms. Ninan explained that bonds issued by a state agency (such as the Authority) generally receive Federal tax-exempt status when the borrower is a 501(c)(3) organization. There may also be state tax advantages. Almost exclusively, bonds issued by the Authority are structured to comply with the Internal Revenue Code (the "Code") to provide that tax-favored treatment.

Dr. Palley noted that the Authority should be provided with detailed information regarding how an approved borrower will be using the bond proceeds. Ms. Ninan explained that the proceeds from the bond offerings are for capital improvements or refinancing of previously approved projects and must be used for the stated purposes to comply with the Code's requirements.

Mr. Quinn discussed the general procedures historically practiced by the Authority. He noted that he could not locate in the Authority's records or minutes any formally adopted policies, procedures, or guidelines, other than those expressly provided by the statute. In fact, however, all Authority bonds have had investment grade ratings at the time of issuance. One bond application was approved on the condition that the bonds first receive an investment grade rating, which they did. Mr. Quinn also noted that bond ratings can fluctuate after issuance and, consequently, there have been periods of time when certain outstanding Authority bonds have held below-investment-grade ratings.

Mr. Eriksen stated that, historically, the Authority has had specific Members who might not vote to approve below-investment-grade bonds.

Mr. Quinn reminded the Members that the Authority has always relied on the advice of a professional financial advisor for recommendations regarding financings. The current advisor is PFM. Mr. Eriksen recalled that Merrill Lynch was the advisor prior to PFM. Mr. Quinn stated that PFM's considerations in making its recommendations to the Authority are set forth in the materials distributed at the meeting. These considerations were reviewed. Mr. Quinn also stated that each borrower enters into an Expense and Indemnity Agreement with the Authority; that the Authority has D&O insurance; that the Authority relies on advice of its independent legal counsel who is not providing advice to any other party in a bond transaction; and that the other parties to a bond transaction (e.g., borrower, lender, trustee) also have legal and financial advisors. Finally, bond counsel is involved in the transaction and renders an opinion that the bonds comply with all applicable law. For all recent Authority bonds, bond counsel has been Ms. Ninan of Ballard Spahr LLP.

Ms. More explained that the ratings issued by the rating agencies affect the interest rate on bonds being issued and can affect the value of outstanding bonds. Also, bonds can go to market without a rating and in those circumstances the bonds can be affected by the credit rating of the borrower. Mr. Eriksen referred to this as a "market test," that is, the hospital's ability to sell bonds on its own merits. Ms. More added that the underwriters create the market for the bonds and can make adjustments to the price (interest rate) of the bonds if necessary in order to sell the issue. Ms. Abrantes of PFM noted that all Authority bonds have received investment grade ratings and, where necessary, have obtained credit enhancements to achieve this result.

Ms. Abrantes added that the Authority generally provides two approvals for every bond issue. The first approval mostly pertains to the overall structure of the transaction and granted by the Authority proper. The second approval, by the Authority's Bond Committee, as appointed from time to time for specific bonds, provides assurance that all conditions of the Authority's first approval are satisfied and that the pricing by the underwriters is appropriate and meets the borrower's expectations.

Mr. Eriksen noted that the Authority has always worked with first class underwriters for the bonds issued, names that the Members would all recognize.

Upon requests from Mr. Forbes and Mr. Neaton, Mr. Quinn stated that there is no requirement in the Authority's statute that bonds have an investment grade rating and, in fact, the statute seems to contemplate that the Authority's powers include facilitating financings that have no rating whatsoever.

Dr. Palley noted that the lower rated bonds pay a higher interest rate to compensate the bondholder for the additional investment risk. On the other hand, facilitating a hospital's borrowing capacity by enabling low-rated bond issuances may promote the hospital's financing of new unnecessary health facilities.

The Members then discussed whether there was a moral obligation to ensure that its bonds have an investment grade rating. The Members made no formal declaration in this regard but the general opinions of individual Members was that there was no moral obligation.

In follow-up to Dr. Palley's observations, at Mr. Baker's request, the Members discussed the State's Certificate of Need requirement [now, Certificate of Public Review], which is within the realm of the Delaware Health Resources Board, another Delaware agency created by statute. In the course of these discussions, Dr. Palley noted that the Members are evaluating a market-based financing system but the hospitals themselves are not market-based operators. Dr.

Palley suggested that the Members might give further consideration to the extent to which the Authority relies on the Heath Resources Board's determinations.

Mr. Quinn advised the Members that, in 1999, the Authority's legal advisor sent a letter on behalf of the Authority to then Governor Carper and identified a "policy and procedure" that the Authority's bonds will have an investment grade rating. This letter appeared to be a follow-up to a meeting with State representatives several days earlier. Mr. Quinn indicated that he had not located an executed version of the letter, but that the unsigned version will be circulated to the Members for review. At the Members' request, Mr. Quinn stated that he would attempt to locate a signed copy of the letter [said letter was subsequently located and distributed to the Members] and would also discuss this "policy" and the Authority's obligations with the Delaware Director of Bond Finance.

With assistance from Ms. More, Mr. Quinn discussed the various rating agencies bond rating measures and default probabilities (all as captured in the meeting materials). Ms. More added that each rating agency relies on different criteria in establishing its rating. Ms. More and Ms. Abrantes also noted that hospitals' default rates are slightly higher than the general municipal bond defaults reflected on Mr. Quinn's handouts.

Ms. Abrantes explained that each agency considers different factors and weighs the factors differently. For example, one agency might place greater emphasis on cash on hand while another agency gives more weight to operating performance. In its own analysis, PFM does not determine the probability of a bond default but considers the suitability of the buyer of a particular issue of bonds, for example, retail investor, on the one hand, and institutional investor or other sophisticated buyer, on the other hand.

Members discussions continued. The Members discussed factors such as the involvement of institutional investors and the fact that Authority bond prices change post-issuance if, for example, the bonds are downgraded. The Members also considered that, for any particular issue, a proposed bond's interest rate might change if the issue is delayed, because there can be changes in the bond market generally or changes in the borrower's financial condition.

The Members' discussions then turned to how the Authority's counterparts in other states operate. Ms. Abrantes noted that there is a National Association of Health and Educational Facilities Finance Authorities (the "Association"). The Authority is not a member of the Association. Mr. Quinn noted that most, if not all, of the Association's members are Authorities that are active marketers of their services and have multi-person full-time staffs usually consisting of at least an Executive Director and a full-time associate director or assistant. Some Authorities have large organizations of full-time and part-time employees and experts. Mr. Quinn explained that there is no reason to believe that other Authorities have powers identical to the Authority's.

During the discussions, the Members noted that nursing homes and continuing care facilities are possible candidates for Authority assistance but most have borrowed through Delaware Economic Development Authority or the City or County in which they are located.

These are also possible sources of funding for hospitals but hospitals generally find that financing through the Authority is the preferred choice due to economics including low transactional costs.

Mr. Eriksen suggested that the Members consider the possibility that the Authority may, in the future, want to entertain various proposals from hospitals and other health facilities and not set approval criteria in advance.

After much discussion, Dr. Palley asked for clarification regarding the outcome of the current meeting. Dr. Palley expressed the opinion that the Authority should consider adopting a policy or establishing approval criteria that would require or give significant weight to bonds that have all investment-grade ratings.

In response to Mr. Forbes' request, Mr. Quinn again stated that the Authority's statute does not require that its bonds have an investment grade rating.

Dr. Palley moved that Mr. Quinn and Ms. Abrantes investigate how other states' authorities handle the issue of investment grade ratings and provide detailed information to the Authority for review and consideration at a future meeting. Mr. Baker seconded the motion. All Members present at the meeting voted in approval of the motion. There was no opposition expressed informally by the Members on the telephone connection (who are not permitted to vote by electronic means). Mr. Quinn agreed to follow up with Ms. Abrantes to plan how best to obtain the requested information.

Mr. Quinn asked the Members if they wanted him to advise Nanticoke Hospital regarding its desire to submit a bond application to the Authority in April. He noted that the hospital's advisors informed him that there was significant expense related to preparing an application to the Authority. After brief discussion, it was decided that Mr. Quinn would advise Nanticoke that the Authority has not resolved the questions of policy, if any, on bond ratings, and that the hospital should proceed in the manner that it deems best.

Ms. Ninan reminded the Members that she serves as bond counsel in the Authority's bond transactions and is available to provide assistance as needed in helping the Authority continue its consideration of these matters.

Upon motion duly made and seconded, Mr. Eriksen adjourned the meeting at approximately 11:35 a.m.

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CERTIFICATION

I, Desmond A. Baker, hereby certify that the foregoing is a true and correct copy of the Minutes of Special Meeting of the Delaware Health Facilities Authority held on March 27, 2013.

Desmond A. Baker
Secretary-Treasurer

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ATTACHMENT

Meeting Handouts (as distributed at and prior to the meeting)